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Attorneys for Defendant  
HOME DEPOT U.S.A., INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GABRIEL ORTIZ, ANDREW GONZALES,  
LANDON MICKEY MILLER, AND JOE  
HUYNH, on behalf of themselves and all  
others similarly situated,

**Plaintiffs,**

V.

## **HOME DEPOT U.S.A., INC.,**

Defendant.

Case No. C 09-03485 LHK

**STIPULATED REQUEST FOR  
EXTENSION OF TIME TO FILE  
CLASS ACTION SETTLEMENT  
AGREEMENT; [PROPOSED] ORDER**

[Fed. R. Civ. P. 26(f), Civ. L.R. 6-1(b), 6-2, 7-12.]

## The Honorable Lucy H. Koh

After two mediation sessions before the Honorable Edward A. Infante (ret.), and significant efforts and negotiations following those sessions, the parties reached an agreement on material terms, including provisions for class-wide equitable relief, monetary relief to the putative class members and named plaintiffs, and reasonable attorneys' fees and costs, subject to reaching a final agreement on all language of a class action settlement agreement. *See* Declaration of William F. Allen, ¶ 2. On July 7, 2011, the parties filed a notice of settlement and jointly requested a stay of the pre-trial scheduling order to permit the parties time to draft a formal class action settlement agreement and the motion papers to present to present to the Court in connection with a motion for preliminary approval of the proposed agreement. *See* dkt. no. 63; Allen decl. at ¶ 3. On July 7, the Court stayed the pre-trial schedule and ordered the parties to file a motion for preliminary approval by August 31, 2011, or

1 prepare to file their class certification briefing on an expedited basis. *See* dkt. no. 64; Allen decl. at ¶  
 2 4.

3 Since the Court's July 7, 2011 order, the parties have worked diligently to finalize the  
 4 settlement agreement, draft the class notice, and draft the motion for preliminary approval. The parties  
 5 have exchanged several drafts and held frequent discussions regarding the structure and terms of the  
 6 settlement agreement, which is 29 pages long and proposes Rule 23(b)(2) and Rule 23(b)(3) classes.  
 7 *See* Allen decl. at ¶ 5. The parties have also considered the impact of the Supreme Court's recent  
 8 decision in *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, \_\_\_\_ U.S. \_\_\_\_ (June 20, 2011). *See id.* The  
 9 full written agreement has been reviewed by defendant's counsel and is pending final review by Home  
 10 Depot's Office of General Counsel. Defendant expects final review and approval to be completed by  
 11 no later than Wednesday, September 7, 2011. *See id.* at ¶ 6.

12 Plaintiffs intend to file their motion for preliminary approval (which defendant's counsel has  
 13 reviewed) on August 31, 2011 without a copy of the agreement. Plaintiffs will not be able to file the  
 14 signed settlement agreement on the same day as the motion because the full written agreement is still  
 15 pending final review by Home Depot's Office of General Counsel. Accordingly, in accordance with  
 16 Civil Local Rules 6-1(b) and 6-2(a), the parties request a brief extension to supplement the motion for  
 17 preliminary approval by filing the actual signed settlement agreement on or before September 7, 2011.  
 18 to file the settlement agreement until September 7, 2011. Plaintiffs have contacted the Court's clerk  
 19 and requested that the scheduled September 29, 2011 status conference be converted to a hearing on  
 20 the unopposed motion for preliminary approval. The requested brief extension should not require  
 21 rescheduling of that hearing, and will not alter the date of any other hearing or proceeding on the  
 22 Court's calendar. *Id.* at ¶ 7; *see* Civ. Local R. 6-1(b).

23 On January 26, 2011, the Court issued a scheduling order modifying the pretrial schedule  
 24 originally set by the Honorable James Ware in his order of February 25, 2010. Dkt. no. 50. In addition  
 25 to the January 26, 2011 Case Management Order and the July 7, 2011 Stay Order, the following time  
 26 modifications have been made by the Court, upon motion or by stipulation: (1) plaintiffs' motion for  
 27 continuance of Case Management Conference (*see* dkt. no. 10); (2) stipulation to extension of time for  
 28 Defendant to file answer to amended complaint (*see* dkt. no. 13); (3) stipulation to extend time for

1 mediation (*see* dkt. no. 36); (4) stipulation to extend time for taking Rule 30(b)(6) deposition (*see* dkt.  
2 No. 36); and (5) stipulation to extend time for expert disclosures pertaining to class certification (*see*  
3 dkt. No. 58). *See* Allen decl. at ¶ 8.

4 A declaration from defendant's counsel William F. Allen in support of this stipulated request is  
5 enclosed. *See* Civ. Local R. 6-2(a).

6 Dated: August 31, 2011.

7 THE LEGAL AID SOCIETY-EMPLOYMENT  
LAW CENTER

8 SCHNEIDER WALLACE  
9 COTTRELL BRAYTON  
KONECKY LLP

10 \_\_\_\_\_/s/ Jinny Kim

11 JINNY KIM

12 Attorneys for Plaintiffs  
13 Gabriel Ortiz, Andrew Gonzales, Landon Mickey  
Miller, and Joe Huynh

14 Dated: August 31, 2011.

15 AKIN GUMP STRAUSS HAUER & FELD LLP

17 \_\_\_\_\_/s/ Teresa W. Ghali

18 TERESA W. GHALI

19 Attorneys for Defendant  
20 HOME DEPOT U.S.A., INC.

ECF CERTIFICATION

Pursuant to General Order No. 45 X. (B), I attest that concurrence in the filing of this document has been obtained from Jinny Kim.

Dated: August 31, 2011.

/s/ Teresa W. Ghali  
TERESA W. GHALI

## **DECLARATION OF WILLIAM F. ALLEN**

I, William F. Allen, declare,

1. I am an attorney in good standing admitted *pro hac vice* to practice in the Northern District of California and am attorney of record for defendant Home Depot U.S.A., Inc. in *Ortiz v. Home Depot U.S.A., Inc.*, Case No. C 09-03485 LHK (N.D. Cal.). I make this declaration based on my own personal knowledge and, if called to do so, could and would competently so testify in court.

2. After two mediation sessions before the Honorable Edward A. Infante (ret.), and significant efforts and negotiations following those sessions, the parties reached an agreement on material terms, including provisions for class-wide equitable relief, monetary relief to the putative class members and named plaintiffs, and reasonable attorneys' fees and costs, subject to reaching a final agreement on all language of a class action settlement agreement.

3. On July 7, 2011, the parties filed a notice of settlement and jointly requested a stay of the pre-trial scheduling order to permit the parties time to draft a formal class action settlement agreement and the motion papers to present to the Court in connection with a motion for preliminary approval of the proposed agreement. *See* dkt. no. 63.

4. On July 7, the Court stayed the pre-trial schedule and ordered the parties to file a motion for preliminary approval by August 31, 2011, or prepare to file their class certification briefing on an expedited basis. *See* dkt. no. 64.

5. Since the Court's July 7, 2011 order, the parties have worked diligently to finalize the settlement agreement, draft the class notice, and draft the motion for preliminary approval. The parties have exchanged several drafts and held frequent discussions regarding the structure and terms of the settlement agreement, which is 29 pages long and proposes Rule 23(b)(2) and Rule 23(b)(3) classes. The parties have also considered the impact of the Supreme Court's recent decision in *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, \_\_\_ U.S. \_\_\_ (June 20, 2011).

6. The full written agreement has been reviewed by defendant's counsel and is pending final review by Home Depot's Office of General Counsel. Defendant expects final review and approval to be completed by no later than Wednesday, September 7, 2011.

1       7. Plaintiffs have informed me that they intend to file their motion for preliminary  
2 approval, which I have reviewed, on August 31, 2011 without a copy of the settlement agreement.  
3 Plaintiffs will not be able to file the signed settlement agreement today with the motion because the full  
4 written agreement is still pending final review by Home Depot's Office of General Counsel. The  
5 parties are requesting a brief extension of the deadline to supplement the motion for preliminary  
6 approval by filing the actual signed settlement agreement on or before September 7, 2011. The  
7 extension will not alter the date of any hearing or proceeding on the Court's calendar. Plaintiffs have  
8 contacted the Court's clerk and requested that the scheduled September 29, 2011 status conference be  
9 converted to a hearing on the unopposed motion for preliminary approval. The requested brief  
10 extension should not require rescheduling of that hearing, and will not alter the date of any other  
11 hearing or proceeding on the Court's calendar.

12        8. On January 26, 2011, the Court issued a scheduling order modifying the pretrial  
13 schedule originally set by the Honorable James Ware in his order of February 25, 2010. Dkt. no. 50.  
14 In addition to the January 26, 2011 Case Management Order and the July 7, 2011 Stay Order, the  
15 following time modifications have been made by the Court, upon motion or by stipulation: (1)  
16 plaintiffs' motion for continuance of Case Management Conference (*see* dkt. no. 10); (2) stipulation to  
17 extension of time for Defendant to file answer to amended complaint (*see* dkt. no. 13); (3) stipulation  
18 to extend time for mediation (*see* dkt. no. 36); (4) stipulation to extend time for taking Rule 30(b)(6)  
19 deposition (*see* dkt. No. 36); and (5) stipulation to extend time for expert disclosures pertaining to class  
20 certification (*see* dkt. No. 58).

21       9. Plaintiffs' counsel Jinny Kim has authorized defendant's counsel to sign the joint  
22 stipulated request on plaintiffs' behalf.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 31<sup>st</sup> day of August, 2011, in Washington, DC.

/s/William F. Allen  
William F. Allen

1       The parties stipulate that they are prepared to file a class action settlement agreement in this  
2 action by September 7, 2011.

3       PURSUANT TO THE PARTIES' STIPULATED REQUEST FOR AN EXTENSION OF  
4 TIME, AND GOOD CAUSE SHOWN, IT IS SO ORDERED THAT:

5       Plaintiffs shall file the settlement agreement on or before September 7, 2011.

6  
7       IT IS SO ORDERED.

8  
9       Dated: September 1, 2011

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12       THE HON. LUCY H. KOH  
United States District Judge

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